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Miskin & Tsui-Yip LLP 1350 Broadway, Suite 802 NEW YORK, NY 10018			EXAMINER DUNWOODY, AARON M	
			ART UNIT	PAPER NUMBER
			3679	
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			12/16/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/849,635

**Applicant(s)**

SHEMTOV, SAMI

**Examiner**

Aaron M. Dunwoody

**Art Unit**

3679

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-16, 20-35 and 37-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16, 20-35 and 37-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SEA-3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/5/2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-16, 20-35, 37-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "lower", "above", "upwardly", "upper", "horizontally" and "vertically", in claim independent claims are relative terms which render the claims indefinite. The terms "lower", "above", "upwardly", "upper", "horizontally" and "vertically" are not defined by the independent claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The independent claims appear to define the claimed invention in terms of the non-claimed remote supporting structure. Applicant should amend claims accordingly.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-16, 20-35, 37, 38, 39 and 40-45 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 3493206, Albro.

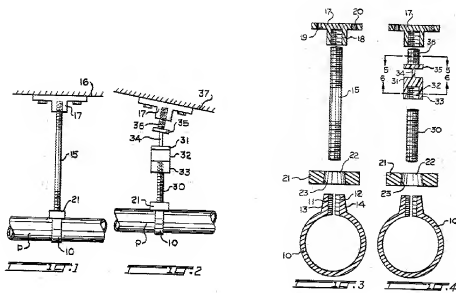
In regards to claims 38, 39 and 42, in Figures 1 and 3 below, Albro discloses a combination of a coupling member (10), an electrical wire-carrying conduit (P), and a connecting member (15) for positioning and securing said conduit to a remote supporting structure having an elongated surface above said coupling member, said combination comprising:

said electrical wire-carrying conduit having opposite ends;

said coupling member receiving and supporting said conduit, said coupling member comprises a tubular member having a longitudinal axis and at least one end, said end receiving one end of said conduit along said longitudinal axis, and said tubular member having a wall containing an aperture facing the remote supporting structure above said coupling member; and

said connecting member having opposite ends, one end of said connecting member securely engaging said aperture in said wall of said tubular member, the opposite end of said connecting member extending outwardly beyond said wall and upwardly toward said remote structure, and

a clamp assembly (17), said opposite end of said connecting member engaging said clamp assembly which is adapted to securely engage the remote supporting structure selectively along its elongated surface, to securely hold and support said coupling member and said conduit in a selected position, and to be removably engageable to said remote supporting structure.



Note, the remote support structure is not consider part of the claimed invention.

In regards to claim 2, in Figures 1 and 3 above, Albro discloses said wall is raised relative to the exterior surface of said tubular member.

In regards to claim 3, in Figures 1 and 3 above, Albro discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 4, in Figures 1 and 3 above, Albro discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 5, in Figures 1 and 3 above, Albro discloses a lock nut (21) along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 6, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 7, in Figures 1 and 3 above, Albro discloses comprising a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 8, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 9, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 10, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 11, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 12, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 13, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 14, in Figures 1 and 3 above, Albro discloses wherein said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 15, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 16, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 20, in Figures 1 and 3 above, Albro discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 21, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 22, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 23, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 24, in Figures 1 and 3 above, Albro discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 25, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 26, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.



In regards to claim 27, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 28, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 29, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 30, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 31, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 32, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 33, in Figures 1 and 3 above, Albro discloses said end of said connecting member is positioned within the confine of said tubular member in direct contact with said conduit.

In regards to claim 34, in Figures 1 and 3 above, Albro discloses each of said ends of said tubular member is externally threaded for receiving said conduit.

In regards to claim 35, in Figures 1 and 3 above, Albro discloses each of said ends of said tubular member further having an opening through said tubular member, said opening is internally threaded to receive a set screw for securely positioning said conduit.

In regards to claim 36, in Figures 1 and 3 above, Albro discloses said aperture is generally perpendicular to said longitudinal axis of said tubular member.

In regards to claim 40, in Figures 1 and 3 above, Albro discloses said tubular member further having a wall surrounding an interior space, wherein said aperture receiving said end of said connecting member within said interior space.

In regards to claim 41, in Figures 1 and 3 above, Albro discloses said conduit further having a longitudinal axis coaxially aligned with said longitudinal axis of said tubular member.

In regards to claim 43, in Figures 1 and 3 above, Albro discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 44, in Figures 1 and 3 above, Albro discloses said at least one end of said tubular member is externally threaded for receiving said conduit.

In regards to claim 45, in Figures 1 and 3 above, Albro discloses said at least one end of said tubular member further has an opening through said tubular member,

said opening is internally threaded to receive a set screw for securely positioning said conduit.

Claims 2-16, 20-35, 37, 38, 39 and 40-50 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 2246557, Walters.

In regards to claims 38, 39, 42, 46 and 50, in Figures 1-3 and 10 below, Walters discloses a combination of a coupling member (7), an electrical wire-carrying conduit (2, 2"), and a connecting member (25) for positioning and securing said conduit to a remote supporting structure having an elongated surface above said coupling member, said combination comprising:

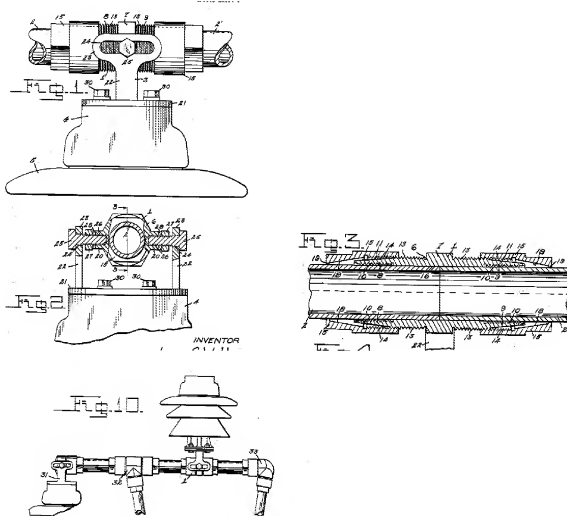
said electrical wire-carrying conduit having opposite ends;

said coupling member receiving and supporting said conduit, said coupling member comprises a tubular member having a longitudinal axis and at least one end, said end receiving one end of said conduit along said longitudinal axis, and said tubular member having a wall containing an aperture facing the remote supporting structure above said coupling member; and

said connecting member having opposite ends, one end of said connecting member securely engaging said aperture in said wall of said tubular member, the opposite end of said connecting member extending outwardly beyond said wall and upwardly toward said remote structure, and

a clamp assembly (22), said opposite end of said connecting member engaging said clamp assembly which is adapted to securely engage the remote supporting

structure selectively along its elongated surface, to securely hold and support said coupling member and said conduit in a selected position, and to be removably engageable to said remote supporting structure.



Note, the remote support structure is not considered part of the claimed invention.

In regards to claim 2, in Figures 1-3 and 10 above, Walters discloses said wall is raised relative to the exterior surface of said tubular member.

In regards to claim 3, in Figures 1-3 and 10 above, Walters discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 4, in Figures 1-3 and 10 above, Walters discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 5, in Figures 1-3 and 10 above, Walters discloses a lock nut (27) along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 6, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 7, in Figures 1-3 and 10 above, Walters discloses comprising a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 8, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 9, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 10, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 11, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 12, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 13, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 14, in Figures 1-3 and 10 above, Walters discloses wherein said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 15, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 16, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 20, in Figures 1-3 and 10 above, Walters discloses said aperture is threaded internally and said end of said connecting member is externally matingly threaded for engaging into said internally threaded aperture.

In regards to claim 21, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 22, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 23, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 24, in Figures 1-3 and 10 above, Walters discloses a lock nut along said end of said connecting member for locking said end of said connecting member into said aperture.

In regards to claim 25, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 26, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 27, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 28, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 29, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 30, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 31, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 32, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.



In regards to claim 33, in Figures 1-3 and 10 above, Walters discloses said end of said connecting member is positioned within the confine of said tubular member in direct contact with said conduit.

In regards to claim 34, in Figures 1-3 and 10 above, Walters discloses each of said ends of said tubular member is externally threaded for receiving said conduit.

In regards to claim 35, in Figures 1-3 and 10 above, Walters discloses each of said ends of said tubular member further having an opening through said tubular member, said opening is internally threaded to receive a set screw for securely positioning said conduit.

In regards to claim 36, in Figures 1-3 and 10 above, Walters discloses said aperture is generally perpendicular to said longitudinal axis of said tubular member.

In regards to claim 40, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a wall surrounding an interior space, wherein said aperture receiving said end of said connecting member within said interior space.

In regards to claim 41, in Figures 1-3 and 10 above, Walters discloses said conduit further having a longitudinal axis coaxially aligned with said longitudinal axis of said tubular member.

In regards to claim 43, in Figures 1-3 and 10 above, Walters discloses said tubular member further having a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 44, in Figures 1-3 and 10 above, Walters discloses said at least one end of said tubular member is externally threaded for receiving said conduit.

In regards to claim 45, in Figures 1-3 and 10 above, Walters discloses said at least one end of said tubular member further has an opening through said tubular member, said opening is internally threaded to receive a set screw for securely positioning said conduit.

In regards to claim 47, in Figures 1-3 and 10 above, Walters discloses said tubular member further has a stop member having a round shape projects internally at about the middle of said tubular member.

In regards to claim 48, in Figures 1-3 and 10 above, Walters discloses each of said ends of said tubular member is externally threaded for receiving said conduit.

In regards to claim 49, in Figures 1-3 and 10 above, Walters discloses each of said ends of said tubular member further having an opening through said tubular member, said opening is internally threaded to receive a set screw for securely positioning said conduit.

### ***Response to Arguments***

Applicant's arguments filed 10/5/2009 have been fully considered but they are not persuasive.

Applicant argues that neither Albro nor Walters have not been applied to any other claim than 38. The Examiner disagrees. The Albro rejection above has been clearly applied to claims 2-16, 20-35, 37, 38, 39 and 40-45, and Walters has been clearly applied to claims 2-16, 20-35, 37, 38, 39 and 40-50.

Applicant argues that the statement of a ground for rejection and the recitation of the text of a single rejected independent claim is not compliant with either the statute or

the rules. The Examiner disagrees. The statement of a ground for rejection above is compliant with either the statute or the rules. The Examiner invites Applicant to specifically state which parts of the above rejections are compliant.

Applicant argues the device disclosed in the instant application requires only one (1) person to fix the clamp to the beam anywhere along its length, convenient to the conduit to be supported. The Examiner neither agrees nor disagrees. The recited claims do limit the invention to only one (1) person to fix the clamp to the beam anywhere along its length.

Applicant argues that the statement of a ground for rejection and the recitation of the text of a single rejected independent claim does not establish a *prima facie* case of anticipation. The Examiner disagrees. The rejections above clearly establish a *prima facie* case of anticipation.

Applicant argues that Albro does not anticipate a coupling, and Walters does not anticipate a clamp assembly. The Examiner disagrees. While anticipation requires the disclosure of each and every limitation of the claim at issue in a single prior art reference, it does not require such disclosure *in haec verba*. In re Bode, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977). In addition, it does not require that the prior art reference "teach" what the application at issue teaches. Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). Finally, Applicant is reminded that during examination claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

In response to applicant's argument that Walters discloses does not provide a clamp assembly *adapted to selectively and securely engage the remote supporting structure, to securely hold and support said coupling member and said conduit in a selected position, and to be removably engagable to said remote supporting structure*), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Further, It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Dunwoody whose telephone number is 571-272-7080. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron M Dunwoody/  
Primary Examiner, Art Unit 3679

.amd